IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1295 of 1990

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHAVNIPRASAD RAMCHARAN

Versus

VIRAMBHAI BHIKHABHAI BHARWAD

Appearance:

MR SHAILESH C PARIKH for the Petitioner

Respondent SERVED

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 05/05/2005

ORAL JUDGEMENT

Feeling aggrieved by the judgment and order dated 7th December, 1989 passed by the learned District Judge, Ahmedabad (Rural) in Regular Civil Appeal No.78/1987 the

respondent, defendant in Civil Suit No.693/1980, has preferred the present Revision Application under Section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as "the Rent Act").

The petitioner is the tenant in a room in Virambhai's Chawl situated at Thakkarbapanagar, Ahmedabad. The respondent is the landlord. The respondent instituted Civil Suit No.693/1980 in the Court of Civil Judge (J.D.), Narol for recovery of possession of the suit room and the amount of arrears of rent due. It was alleged that the petitioner was the tenant in the suit room for a monthly rent of Rs.35=00 and electricity consumption charges of Rs.5=00; that the petitioner was in arrears of rent since 10th October, 1979; that the suit notice was given on 30th June, 1980. A demand was made for the amount of arrears of rent and the tenancy was terminated. In spite of the receipt of the suit notice the petitioner did not pay the amount of rent due nor did he handover the possession of the suit room and nor was there a dispute as to the standard rent of the suit room.

The suit was contested by the petitioner. He filed written statement Exh.12. He denied that the agreed rent of the suit room was Rs.35=00. According to him the agreed rent of the suit room was Rs.25=00 per month and the petitioner was charged Rs.10=00 per month for electricity consumption. He stated that the rent of Rs.35=00 per month was excessive and that the standard rent of the suit room was Rs.12=00 per month. He also maintained that he had paid the rent up to 9th January, 1980. On 17th June, 1980 the petitioner had taken out Misc. Application No.181/1980 for determination of the standard rent of the suit room. The learned Civil Judge held that as the petitioner had raised dispute as to the standard rent the case was covered by Section 12(3)(b) of the Rent Act. The petitioner had paid the rent up-to-date as required under Section 12(3)(b) of the Rent Act. He was, therefore, protected against eviction. The learned Civil Judge, therefore, dismissed the suit for recovery of possession of the suit room however, passed decree for recovery of the amount of rent due.

Feeling aggrieved, the respondent preferred the above referred Regular Civil Appeal No.78/1987 in the Court of District Judge, Ahmedabad (Rural). The learned District Judge was pleased to confirm the finding that the case was covered by Section 12(3)(b) of the Rent Act.

The learned District Judge observed that the petitioner had failed to pay or tender the amount of rent regularly as required under Section 12(3)(b) of the Rent Act. The petitioner had thus forfeited protection against eviction conferred by Section 12(3)(b) of the Rent Act. It has been recorded that pending the suit the respondent had taken out application under Section 11(4) of the Rent Act. By order dated 14th April, 1981 the petitioner was directed to pay interim standard rent of Rs.40=00 per month (including electricity charges of Rs.5=00) regularly every month before 15th of each calendar month. The petitioner filed pursis Exh.67 and declared that he had deposited a sum of Rs.3,081=00 in compliance with the direction issued by the Court. However, thereafter, he failed to comply with the said direction and neglected to pay the rent regularly. Pending the appeal the petitioner neglected to pay the rent. He deposited a sum of Rs.1,000=00 on 2nd December, 1989 i.e. just days before the pronouncement of the judgment in appeal. Still, however, the rent deposited by him was deficit by Rs.610=00. The learned District Judge held that the petitioner had failed to comply with the conditions mentioned in Section 12(3)(b) of the Rent Act. He was, therefore, liable for eviction. By impugned judgment and order dated 7th December, 1989 the appeal was allowed and decree for eviction was passed against the petitioner. Therefore, the present Revision Application.

The above referred facts stated in the impugned judgment are not disputed. Undoubtedly, as on the date of the suit notice, the dispute as to the standard rent was existing. The petitioner had also raised dispute as to the standard rent in reply to the suit notice. He was, therefore, entitled to protection against eviction as envisaged by Section 12(3)(b) of the Rent Act. To earn the protection under Section 12(3)(b) of the Rent Act he was required to pay the amount of rent due on or before the first day of hearing of the suit and to pay or tender the rent regularly thereafter. It is well settled that the rent is required to be paid or deposited regularly not pending the suit alone but also pending the appeal before the appellate Court. In the present case, admittedly, the petitioner neglected to pay or tender the monthly rent pending the appeal. Part of the amount of rent due was paid by the petitioner towards the end of the appeal. On account of the said default of the petitioner the respondent was entitled to a decree for possession. The learned District Judge had, therefore, rightly passed decree for possession against the petitioner.

In view of the above discussion the Revision Application is dismissed with cost. Rule is discharged. Interim relief stands vacated.

(Ms. R.M.Doshit, J.)

/sakkaf